

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.788 of 2012**

Rajendra Sharma, S/o Shri Badri Prasad Sharma, aged about 49 years, Jail Prahari (Constable) from O/o Sub – Jail Dhamtari, R/o through Shri Bhudhar Prasad Sharma, Saw Mill Pachpedi Naka, Raipur, Tahsil & Distt.Raipur (CG)

---Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Home Department, Mantralaya, D.K.S. Bhawan, G.E. Road, Raipur (CG)
2. Inspector General of Jail, Chhattisgarh, D.K.S. Bhawan, Raipur (CG)
3. Superintendent of Jail, Ambikapur, Distt.Surguja (CG)

---Respondents

For Petitioner	: Mr.H.B.Agrawal, Senior Advocate with Ms Swati Agrawal, Advocate
For Respondents/State	: Mr.Sunil Otmani, Addl.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through Video Conferencing

23/08/2021

1. The petitioner herein being Jail Guard was terminated from service by order dated 23.5.2000 by the competent authority, which he preferred an appeal before the appellate authority on 26.6.2000. That appeal has been allowed by the impugned order 31.8.2010 (Annexure P-4) and he has been reinstated in service, but full pay and allowances from the date of termination till the date of reinstatement has not been granted on the principle of 'No Work No Pay'. This part of order not granting full pay and allowances from the date of termination till the date of reinstatement has been

called in question by the petitioner in this writ petition.

2. Mr.H.B.Agrawal, learned Senior Counsel with Ms Swati Agrawal, learned counsel for the petitioner, would submit that full pay and allowances from the date of termination till the date of reinstatement ought to have been granted to the petitioner in the light of Rule 54 (2) of the Fundamental Rules, whereas it has not been granted on the principle of 'No Work No Pay', as such, the principle of 'No Work No Pay' would not be applicable.
3. On the other hand, Mr.Sunil Otwani, learned Additional Advocate General for the respondents/State, would submit that the appellate authority has considered the facts and circumstances of the case and rightly held that the petitioner is not entitled for full pay and allowances on the principle of 'No Work No Pay'.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. The Fundamental Rules specially sub-rule (2) of Rule 54 clearly entitles the Government servant for full pay and allowances in case of full exoneration, then question would be whether the State Government is

justified in denying full pay and allowances to the petitioner invoking the principle of 'No Work No Pay' for the period 23.5.2000 to 31.8.2010 ?

6. The principle of 'No Work No Pay' is based upon a fundamental concept in a Law of Contract of Employment namely wages and salary are paid by the employer in consideration of work / service rendered by the employee. 'No Work No Pay' principle has been laid down keeping in view public interest that a Government servant who does not discharge his duty is not allowed pay and arrears at the cost of public exchequer. (See Union Territory, Chandighr v. Brijmohan Kaur¹).
7. The Supreme Court in the matter of State of Bihar and others v. Kripa Nand Singh and another² has observed that 'No Work No Pay' is the rule and 'No Work Yet Pay' is the exception. It was pointed out that exception would apply only when employee is compelled (compulsory waiting period) not to attend his duty without any violation or without any fault on his part.
8. The Supreme Court in the matter of State of Uttar Pradesh and others v. Madhav Prasad Sahrma³ has held that principle of 'No Work No Pay' cannot be applied as a rule of thumb. Full back wages in certain

1 (2007) 11 SCC 488

2 (2014) 14 SCC 375

3 (2011) 2 SCC 212

circumstances may be justified particularly when promotion is wrongly denied.

9. Similarly, in the matter of Commissioner, Karnataka Housing Board v. C. Muddaiah⁴ the Supreme Court has reiterated that principle of 'No Work No Pay' is not absolute in a given case, if it is that the person was willing to work but he was illegally and unlawfully not allowed to do so, the Court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked".
10. In the considered opinion of this Court, the principle of 'No Work No Pay' would not be applicable where the rule expressly direct otherwise like sub-rule (2) of Rule 54 of the Fundamental Rules, which clearly provides that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, shall be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, but subject to proviso to sub-rule (2) of Rule 54 and if the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, but in that case also, the amount determined under proviso to sub-rule (2) shall not be

4 (2007) 7 SCC 689

less than the subsistence allowance and other allowances admissible under Rule 53, as such, when the rule expressly provides for grant of full pay and allowances on full exoneration of the Government servant from punishment/criminal charges, the principle of 'No Work No Pay' would have no application and said principle of 'No Work No Pay' would not override sub-rule (2) of Rule 54 of the Fundamental Rules which provides full pay and allowances on full exoneration.

11. In view of above legal position, the part of impugned order dated 31.8.2010 (Annexure P-4) holding the petitioner to be not entitled for full pay and allowances from the date of termination till the date of reinstatement is hereby set-aside. The matter is remitted to the appellate authority to consider the case of the petitioner for grant of full pay and allowances from 23.5.2000 to 31.8.2010 in light of sub-rule (2) of Rule 54 of the Fundamental Rules and also in light of the judgment delivered by this Court in the matter of **Shankar Lal Soni (died) through LR's v. State of Chhattisgarh and others** (WPS No.994/2010), decided on 9.7.2021 within two months from the date of receipt of a copy of this order by passing a reasoned and speaking order.

12. The writ petition is allowed to the extent indicated

hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-